

## **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated May 11, 2009, (hereinafter Office Action) have been considered. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 12 and 14 have been canceled, without prejudice, rendering each of the rejections of these claims moot. Applicant accordingly requests that each of the rejections of these claims be withdrawn.

With respect to the objection to Claim 9, the claim has been amended to remove the objected-to term. In view of these changes, the objection is believed to be overcome, and Applicant accordingly requests that the objection be removed.

With respect to the § 101 rejection of Claims 1-11, 26, and 27, independent Claim 1 has been amended to indicate that the claimed method is performed at a transmission power controller thereby tying the method to another statutory category of subject matter.

Although the subject matter of these changes was implicitly present in the claims, further support for these changes may be found, for example, in the Specification at paragraph [0047] (as numbered in the published U.S. application); therefore, these changes do not introduce new matter. Since the changes are believed to overcome the rejection, Applicant requests that the rejection be withdrawn.

With respect to the § 101 rejection of Claim 13, the claim has been amended to characterize that the program code sections are stored on a computer readable storage medium such that they are structurally and functionally interrelated to the tangible medium. Support for these changes may be found in the original Specification, for example, at paragraph [0021]. Consistent with MPEP § 2106.01, Applicant submits that the claim is directed to statutory subject matter and accordingly requests that the rejection be withdrawn.

Applicant respectfully traverses each of the prior art rejections (§§ 102(e) and 103(a)), each of which is based at least in part upon the teachings of U.S. Publication No. 2004/0121794 by Koo (hereinafter “Koo”), because Koo alone, or modified as asserted, does not teach or suggest each of the claimed limitations. Specifically, Koo is directed to

controlling power using a transmission time interval (TTI) instead of individual time slots, as claimed. For example, Koo does not teach the claimed determining individual target signal quality offset levels for each individual time slot, determining individual target signal quality levels for at least one of the individual time slots on the basis of the individual target signal quality offset levels, controlling transmission power for each individual time slot, and adapting transmission power to specific interference conditions for each time slot. In contrast, Koo teaches that transmission power is adjusted once per TTI (see, e.g., paragraphs [0033], [0054], and [0055]). However, a disadvantage of this approach is described in the instant application at paragraph [0060]. Notably, the TTI of Koo refers to the length of time required to transmit one block of data passed from higher network layers to the radio link layer such that the TTI of Koo corresponds to the frames discussed at paragraphs [0042] and [0043] of the instant application and does not correspond to individual time slots as claimed.

This primary difference in the teachings of Koo may be illustrated using the limitations of dependent Claim 5. Claim 5 requires that the individual service quality levels (each relating to one of several individual time slots) are bit error ratios. However, the Office Action acknowledges that Koo is directed to Block Error Rate/Block Error Ratio (BLER) at section eleven on page six. BLER is the number of errors within a complete block and does not correspond to the bit error rate (BER) of a time slot. These ratios are also distinguished in Koo at paragraphs [0004] and [0005]. Thus, Koo does not teach at least controlling transmission power for each individual time slot, as claimed. Without correspondence to each of the claimed limitations, each of the prior art rejections are improper.

In order to anticipate a claim, the asserted reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Federal Circuit also recently held that “Because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all

elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” (Net Moneyin, Inc. v. Verisign, Inc., 545 F.3d 1359, 2008 WL 4614511 (Fed. Cir. 2008) quoting Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 1548 (Fed. Cir. 1983)). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain the rejection based on 35 U.S.C. § 102.

Applicant respectfully submits that Koo does not teach every element of independent Claim 1 in the requisite detail, and therefore fails to anticipate Claims 1, 2, 5-8, 10, 11, and 27.

Dependent Claims 2, 5-8, 10, 11, and 27 depend from independent Claim 1 and also stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Koo. While Applicant does not acquiesce with the particular rejections to these dependent claims, these rejections are also improper for the reasons discussed above in connection with the independent claims. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited reference. Therefore, the rejection of dependent Claims 2, 5-8, 10, 11, and 27 is improper, and Applicant requests that the rejection be withdrawn.

With respect to the § 103(a) rejections of Claims 3, 4, 9, 13, 15-26, and 28, Applicant respectfully traverses because the asserted modifications fail to overcome the above-discussed deficiencies in the teachings of Koo. Modifying Koo’s approach as asserted would still fail to teach or suggest controlling transmission power for each individual time slot. Thus, the asserted modifications of the teachings of Koo do not teach each of the limitations of Claims 3, 4, 9, 13, 15-26, and 28, and the rejections should be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

Claims 1 and 15 have also been amended to indicate that the transmission power controller is arranged in a radio access network or a cellular terminal of a time division duplex cellular system supporting multislot services. Support for these changes may be found, for example, in the Specification at paragraphs [0074] and [0075] and do not introduce new matter. These claims, with or without the changes, are believed to be patentable over the teachings of the asserted references for the reasons set forth above.

Authorization is given to charge Deposit Account No. 50-3581 (BKS.022.WUS) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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Date: August 11, 2009

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